

**ILLINOIS LABOR ADVISORY MEETING
MEETING MINUTES
APRIL 14, 2014
1:00 pm**

Board Member Attendance: Jorge Ramirez, Mark Guethle, Brian Glynn, Roberto Carmona, Ralph Graham, Bruce Holland, Heather Goines, Maria Bocanegra, Kim Bobo

Illinois Department of Labor (IDOL) Staff Attendance: Joseph Costigan, Tammy Miner, Ron Willis (via phone), Rosaelia Garcia (via phone), Ryan Culton (via phone), Lilian Jimenez, Tumia Romero, Cheryl Neff, Ellen Schanzle-Haskins, Jeff Naville, Jim Preckwinkle, Larry Thomas Jr., Sal Calace, Gil Jimenez

I. Call to order

The Meeting was called to order at 1:05 pm by Vice-Chairperson, Ralph Graham, member of the Labor Advisory Board.

II. Welcome- Introduction

Ralph Graham welcomed everyone to the Rend Lake Resort the location of the Labor Advisory Board (LAB) Meeting and asked all in attendance to introduce themselves.

III. Approval of Minutes from December 9th Meeting

A motion was made by Ralph Graham and seconded by Mark Guethle to approve the Minutes from the December 9th meeting. The motion was passed.

IV. Director's Comments

Director Costigan, Director of Illinois Department of Labor (IDOL) welcomed the LAB members. Director Costigan explained that the IDOL Senior Staff is in attendance to give division reports so that the Labor Advisory Board can understand the activities the Department is involved in. Director Costigan explained that the Department was before the Senate Appropriation this past week to discuss its Budget. The Director introduced Tumia Romero, Assistant Director of IDOL to discuss issues relating to the Equal Pay Act.

V. Equal Pay Presentation

Assistant Director, Tumia Romero stated in America every women is paid 77 cents less per every dollar men are paid. The governor has issued a proclamation relating to pay equity which is in your packet. A recent rally took place in Chicago in the Daley Plaza on Equal Pay and this is a National issue. The Equal Pay committee is developing a website for a resource for women in general. She encouraged all ideas from the LAB members and IDOL staff.

Ms. Romero also discussed the Labor Summit that took place on January 18th at Malcolm X College in Chicago, about 300 people attended. The Department is working on Labor Summits for the summer and the fall of this year. We need to move forward to meet with groups of businesses to inform them of

Labor laws and Equal Pay so people are aware of the different laws that affect their businesses. Assistant Director, Romero also discussed a current Art Project being undertaken by high school students.

The Director then introduced Ellen Schanzle-Haskins, Special Deputy for the Illinois Department of Labor.

VI. IDOT/IDOL Presentation

Ellen Schanzle-Haskins, IDOL-IDOT Special Deputy, discussed the ongoing joint venture projects with IDOT (Illinois Department of Transportation)/IDOL that will benefit both agencies. Projects include Contracting projects, Safety projects and Prevailing Wage projects. Ms. Schanzle-Haskins also commented on the Workers' Rights and Job Opportunity Summits that took place on Saturday, January 11th in the Quad Cities and on Saturday, February 22nd in Rock Island. There were 230 un-employed and under-employed individuals at this event and discussed on how to get into a Pre-Apprentice training program with the trades. The apprentice program gives those individuals 8 to 10 weeks of life skills and an introduction to the construction craft then move to a regular apprentice training program. A contractor with IDOT which hires a successful graduate from the pre-apprentice program receives \$15 dollar an hour incentive. This is a real incentive to move these individuals from Apprentice to Journeymen. Ms. Schanzle-Haskins also announced the Workers' Rights and Job Opportunity Summit that will take place on Saturday, June 7th in East St. Louis. The summits are sponsored by IDOL, IDOT, CDB, CMS, IDES, the Gamaliel groups, the Faith Coalition and the building trade unions.

VII. Old Business

The Director discussed the possibility of holding a hearing across the state or possibly down south on the issues of Wage Theft. Kim Bobo discussed possibly of having a hearing in this region after the Labor Advisory Board meeting but she explained it is difficult for workers to come forward about wage theft issues. Ms. Bobo commented that as a board member she would like to get more involved with the Department so the Labor Board members feel useful on wage theft issues. Jorge Ramirez added that we need to get all parts of Illinois involved because it is a state issue.

The Director commented about the situation with Passages Hospice which was bought to the Department from State Representatives. Currently, the Department is working on the Passages Hospice Care, which permanently discontinued all of its operation, without meeting payroll obligations. The Department has received 81 claims for unpaid wages and vacation totaling \$450,000. The Director added that 300 workers have been affected overall in Illinois and the Department is waiting to hear from the Illinois Department Home and Family Services on whether those claims can be paid. He is hopeful that 200 to 300 people will get their wages back. The Department is working with other agencies to get this issue resolved.

The Director commented on the changing technology in the Department instituted by Chief Information Officer, Gil Jimenez. Mr. Jimenez is working on mapping the state, to find out exactly where in the state all the wage theft complaints are coming from. Also, the Director added that Kim Bobo has a big event in Chicago this summer, the Interfaith Worker Justice National Conference, so that the Department can

use that venue as a broader discussion on wage theft. This can part of the discussion later in the meeting.

VIII. Legal Report

The Director discussed the two court decisions. The first court case was the upholding of the constitutionality of the Employee Classification Act and the other court case involving ERH Enterprises, Inc. Director Costigan introduced Ron Willis, Chief General Counsel to discuss the court cases in more detail.

- Employee Classification Act

Mr. Willis explained that on February 21, 2014, the Illinois Supreme Court ruled that the Employee Classification Act was constitutional. This ruling confirmed the circuit court ruling as well as the appellate court ruling upholding the constitutionality of the statute. The plaintiff's Rhonda and Jack Bartlow d/b/a Jack's Roofing challenged ECA on grounds that the law violated due process rights and is impermissibly vague because they could not determine from text of the statute how to apply the exemptions and who qualified as an independent contractor. The Illinois Supreme Court rejected those arguments and upheld the constitutionality of the statute stating the Act as written set forth the factors necessary to determine who is an independent contractor and therefore the statute was not unconstitutionally vague. This will allow the Department to precede and enforce this court decision.

- ERH Enterprises, Inc. -Prevailing Wage Act(PWA)

Another case is under the Prevailing Wage Act which is the first case in the Supreme Court has considered since the 1940's. The case dealt with the issue of whether a company that operated water companies down state for municipalities was a "Public Utility Company" under the Prevailing Wage Act. A "Public Utility Company" is exempted from the Prevailing Wage. A public utility company traditionally meant an entity such as "Common Wealth Edison" a regular public utility that was regulated. ERH were just sub-contractors no different than any subcontractor employed by a public body. The court addressed two other important issues 1) the definition of public funds money and 2) the definition of construction under the PWA has maintenance implications.

- Payroll Cards

The Director discussed the issue of the legality of payroll cards and the Department is working on this issue. He commented that an article in the Chicago Tribune on the issue of payroll cards was in yesterday's newspaper. The article printed on April 13th titled, "Illinois AG pushes for payroll card regulations" by Alejandra Cancino, Tribune reporter. Instead of workers getting paychecks they are getting payroll cards. The Department has the responsibility to insure workers are paid correctly and in terms of payroll cards, there is abuse with employees having to pay fees. The Department is working very closely with the Attorney's General's office on the issue of payroll cards.

Ron Willis added that the payroll card issue is governed by the “Wage Payment Collection Act” which defines how you must be paid. Under the Act you should be paid by cash, check or/and you can be paid by voluntarily direct deposit.

The Department had to consider this issue because most other states allow the use of Payroll Cards. The most important issues regarding the use of payroll cards are 1) to insure employees receive all their money, for example if they get paid \$102.32 there must be alternative way to an ATM to get all your money of \$102.32 and 2) the employer must disclose all the fees and it’s use must be voluntary 3) employees have a right to change their mind at anytime. Under these circumstances, employees can volunteer to have a payment through a payroll card.

One advantage of payroll cards versus a check, it cannot bounce because the money is there. The Department agreed with Attorney General that as long as the card had every benefit of a check there should be no opposition to it and the bill has passed the house and is in the senate. The Department has just ruled on their first case on payroll cards, where a very large employer gave the employee a payroll card instead of a check and the Department found it unlawful because it is was not voluntary. As a result the employee was charged with \$200 in charges to withdrawal their money. Some community groups are against payroll cards but the alternative is to subject employees to fees imposed by the currency exchanges.

The Director added that according to the article if you want to use the card as a way to access cash but the goal of the banks is to have employees use it as a debit card. The Director stated he will send out the article to the board for their review.

Kim Bobo suggested someone from the Labor Advisory board should write a letter to the editor from this article talking about the role the Department has taken and secondly she asked whether the Board collectively or individually support this legislation.

Jorge Ramirez suggested if the Department can create a history of the Payroll cards in a letter format the members collectively agree with the letter. The letter to the editor can be written with the historical letter. The Director added it did pass the house but it still has a ways to go because the banks are strong lobbies and have a huge interest to charge fees to the payroll industry. Initially the banks got everyone to use debit cards thinking that there were no fees. If workers are using the payroll cards as debit cards sending money to family members to Mexico or transferring funds that is where all the fees come into play. Ron Willis added the legislature can stop the fee issue which is the most important thing.

Kim Bobo commented that the VITA-Volunteer Income Tax Assistant program in Chicago helped 26,000 families with their taxes mostly low-income families. Something to think about next year during tax season is the issue of payroll cards. According to the Director, this is one of the fastest growing problems around the country, and Illinois can be an example to other states. He is working with the US Senator, Sherrod Brown from Ohio who wants to work on this issue of payroll cards nationally.

Lilian Jimenez, added that restaurant chain “Red Lobster” is using payroll cards currently for their employees. This includes a dishwasher employee who is not sure what they are getting paid and he/she is getting deducted a fee each time he/she uses the ATM.

The Director added that more and more banks are encouraging people to use online banking. As a result, workers who do not have internet access maybe paying fees to use a computer in addition to the use of the ATM machine. Another issue raised in the article is that the payroll cards do not have employees name resulting in employees having difficulty receiving their cash.

Maria Bocanegra asked to what extent a worker can file a complaint on this payroll card issue. Filing a formal complaint within the Department is the only alternative. Ralph Graham, Vice Chairperson, added that it affects all classes especially college students who are getting hit with all the fees also. Jorge Ramirez, Chairperson commented that it is good to have examples from all aspects as this can impact anyone. The Director agreed and explained there is a need to put together powerful stories with all the examples to share with the reporters to a degree we can identify workers.

IX. Illinois/OSHA Presentation

Cheryl Neff, Safety Division Manager discussed the Safety division which is the Safety Inspection and Education Division.

A. Safety Inspection & Education Division

This division has two parts, one which does enforcement and the other which performs consultation side. As of last week, the Safety Inspection and Education Division (SIED) is now called (IL-OSHA) Illinois-Occupational Safety and Health Act. Everything the Safety Department does is related to Occupational Safety and Occupational Health. The Safety department became a state plan as of Sept 1st, 2009 and the Department has three years to be certified with federal OSHA. The Division was given a two year extension until September of this year.

The Occupational Safety and Health programs include enforcement and consultation. Ms. Neff explained the Division has enforcement responsibilities over Public Sector establishments in Illinois and provides consultation services to private businesses. The Enforcement side is funded 50/50 by Federal funds with Federal OSHA and the Consultation side is funded 90/10.

In the State of Illinois the enforcement Division has an obligation with respect to over 1.5 million employees. The Department should have 14 field inspectors. The state has three offices statewide.

B. Enforcement Inspections & Investigations

The first type of inspections the Department does is called "Programmed planned". These inspectors are randomly generated three years in advanced. The inspections are generated from the random city/state guide list. There is no advance notice inspectors appear at the jobsite and their inspections are very comprehensive.

The second type is Complaint investigations which can be either signed by an employee or by a representative of the employee. It can be Union or can be a legal person but it depends on how it is setup. We do not give advanced notice and the scope is limited to whatever the complaint is.

The third type involves Fatality/Catastrophic accidents. This includes a public sector employee killed in the workplace or in the situation where one or more is hospitalized. The division has to be notified and may or may not investigate it depending on the situation or person. The Safety Department does a cause/effect investigation and works with the local entities with the police department and its multi-agency effort.

The fourth type of inspection is the follow-up investigations which occur after the abatement period.

C. Consultation Program and Services

The program was at the Department of Commerce Economic and Opportunity for years and was assigned by IDOL in July 2011. The Division provides services at the request of the employer. It is free, professional, and confidential but employers must fix “serious” unsafe or unhealthy working conditions within a reasonable time frame. Also, the consultation program has no citations or authority to issue penalties and does not advise federal OSHA of its funding.

The Consultation services include a visit, training, assistance and intervention. The visit can be comprehensive or limited evaluation. The training provides informal and formal training. The intervention answers technical questions or concerns.

D. Safety and Health Achievement Recognition Program-SHARP

The last part is the SHARP program which is the best part of the program. The Illinois On-Site Consultation program evaluates smaller companies health and safety programs to determine if they meet the criteria to be recognized as a SHARP program. SHARP recognizes employers who operate exemplary safety and health programs at their worksites that result in immediate and long-term prevention of job-related injuries and illnesses. Illinois currently has 27 companies at various levels of SHARP approval. These companies include IVEX Specialty Paper, LLC and Tru Vue, Inc who received the award this year.

E. Voluntary Compliance Program-VCP

This program is for those public employers who have exemplary occupational safety and health programs. It includes consultation evaluation, VCP application, team evaluation of programs or facilities and recognition.

F. Mission

The mission of the Division as stated is to reduce injuries, illnesses and fatalities, and promoting the value of safety and health in business, the workplace and in people’s lives”. At the end we want all employees to go home safe and healthy at the end of their work day. The Safety Inspection and Education Division currently have 30 employees with 5 vacancies growing very rapidly.

G. Questions and Comments from the SIED presentation

Bruce Holland member of the Labor Advisory Board asked will OSHA supersede the IL-OSHA if it is in the public sector in construction. If the area is in the public sector for example IDOT construction then IL-OSHA will cover the area. The Director added that Bruce Holland is interested in consultation with the private sector we can set this up if he is interested. Another question by Bruce Holland is where is the state funding come from? Ms. Neff answered that part of it comes from General Revenue Fund (GRF) and the other part is 'In-Kind'. The Safety federal grant totals \$5 million in which \$2 million goes into Safety Enforcement and \$3 million goes into Safety Consultation. The Director commented on the SHARP ceremony especially at the Tru Vue, Inc. a glass factory used the consultation program and put safety first. The company is very clean and they changed the worker's safety attitude. They have safety as their number one goal. The Governor is very supportive of our efforts and he walked the glass factory, which had no accidents and no problems.

Ralph Graham asked what is so significant about September 30th. Ms. Neff responded that this is our certification date. Ms. Neff mentioned the Department is currently attempting to fill five Safety Inspector positions especially in downstate. The Director and Cheryl asked if the board members have any recommendations to send their information via CMS (Central Management System) website and fill out an application to get hired.

Kim Bobo asked what the priorities in the state are as far as industries are concerned. Ms. Neff answered 'program planned' is to identify the sites and emphasize each program. The division does site focused programs. The Director commented that the state had the highest number of fatalities and the Department is working with Fire Fighters union to work on training. The Safety department does their own Outreach and they have their own brochures and posters. Jorge Ramirez, chairperson asked how are the Firefighters killed? Cheryl commented that about 50/50 are work-related but most of the fire fighters are killed due to heart attacks after working hours. The Director and the Department is working with IDOT because both departments are very concerned about safety issues especially with respect to construction workers.

X. Prevailing Wage Report

Jeff Naville, Con/Med Division Manager discussed the Prevailing Wage department. Mr. Naville explained he is working with IDOL staff on the case tracking system. He is trying to move in a different direction in a more positive way and move cases through the investigation process in a more consistent basis. Mr. Naville discussed the case handling process. The Department is setting up goals to keep cases moving and to turn them around quickly, so that workers are paid correctly and penalties are paid correctly. The Department is emphasizing outreach on the front-end with public bodies to achieve better compliances. Jeff added that Tom Whalen, prior Con/Med division manager, has since retired, but working on a temporary contract with IDOL and he has been very helpful to facilitate these types of questions and goals.

The Director commented on the Illinois Preference Act law that was passed several years ago but it was shut down by the courts for four different reasons. Three of the challenges have been met by changes

we have implemented within the Department. The one final thing that we have to prove to the courts is the impact of actual workers coming from out of the state is it a real problem. The Department has entered into an agreement with the University of Illinois to do a study on behalf of the department. The University of Illinois will look at the instances of this happening. Hopefully, we will have the results in September and with the results, we believe can move forward to enforce the Illinois Preference Act on public projects. The law has been an effect for several years but has never been enforced.

Jorge Ramirez, chairperson, asked if anyone has filed under the Illinois Preference Act and what is the procedure to make a complaint. Ron Willis explained that until the study is done and it shows that there is an impact on employment in the state, the Department will be unable to enforce the law. The law is on the books and a person can bring a private right of action under the law. According to Mr. Willis, the first step in the studies has been completed.

Mark Guethle asked if the Department will be sharing any data on prevailing wages cases. The Director said the Department is working on the numbers in the prevailing wage area and will share those numbers at a later date.

XI. Fair Labor Standards Report(FLS)

Lilian Jimenez, Fair Labor Standards Division Manager reported that her department covers the Minimum Wage law, Child Labor law, Day, Temporary Labor Services Act, One Day Rest in Seven Act, and the Illinois Wage and Payment Collection Act. In the past three months, the division has been working on modernizing the FLS computer system and has been a push in effort since the beginning of the year. The division is taking new wage claims, scanning them and inputting them electronically into the new system.

Jorge Ramirez added that the Department was in the stone ages using old systems on black and green screens. Gil Jimenez, Chief Information Officer, commented that the Department is trying to update the computer systems so when the compliance officer goes out in the field, they have access to the files in the computer system. The FLS division can check the files in any internet website base system and input the information if necessary. Initially the files were on paper and if the file was lost we had to locate the file. The end goal is to have all the Divisions on one system so that each department is tied together and be able to do this on the road. In the past the department had to type each letter manually in a form letter and now we setup letter via a mail merge system to get letters out faster and quickly. The Director commented that Gil Jimenez has changed our Department around to get into the year 2000 and created the programs to get systems we need in our departments. According to the Director the reason for the delay in our computer systems is due to lack of funding.

Lilian Jimenez added that the Day Temporary Agencies are required to register in the beginning of the year and each agency was notified that they need to register especially in the last three months. The agencies that have registered have increased from last year. The money on penalties has gone up to \$30,000 this year from \$10,000 last year.

Jorge Ramirez asked where does all this money go from the Day Temporary Agencies? According to the Director, this money goes back to the agency and goes back to hiring more individuals for the

department. In the last three months just on Wage Theft we have collected almost \$1.3 million and in 2010 that is what we collected in one year. This was done with the new systems and new processes with the aggressive enforcement we have acted on.

Lilian Jimenez added that as of January 1st, the Hearing fees will be going up to \$500 from \$250 on penalty fees if the employer is owed wages. Every new case this year will go through this new process and will be subject to the increased fees. She added that this is another avenue that we will be collecting fees and money that will come back to the agency. The Director commented that it is important to know that in order to get fees the case has to go through the Hearing process. Lilian Jimenez added that Larry Thomas, Executive Assistant works with employers to try to collect or have a private settlement on our verified pay system before the Hearing process. The Department verifies payment with employers who do not want to get penalized settle with a private agreement. Tammy Miner, Chief Financial Officer commented and stated we have collected about \$145,000 so far in this fund. The Director commented that the Department is doing a lot of work on very small cases and processes all cases.

Maria Bocanegra asked how the Department is locating Day Temporary agencies that are not registered. Lilian Jimenez responded stating the Department has an agreement with the Illinois Department Employee Security that sends the Department a list. The Department works from the list to contact the agencies. We go through a process to make sure they are registered. There is also a cottage industry or employers that are working out of vans but harder to track down. An example is the Ratiros issue based in the Chicago area, where workers are charged for rides and are cheated out of their pay. The big issue in the immigrant communities is they do not see the Department of Labor as a place to reach out to try to help. The Department is working with the workers' centers to work together to deal with these issues and problems.

XII. Schedule for Remainder of 2014

Jorge Ramirez stated that a email will be circulated to the Labor Advisory members to try to arrange the next Labor Advisory meeting in September and December of 2014. Mondays are usually good for the board to meet which includes four September dates and two December dates. The Director commented that the Department will get communication out on the dates for September and December.

XIII. New Business

Bruce Holland asked about an update on the issue regarding the classification for testing, surveying and coverage under the Prevailing Wage Act in the southern half of the state. Ron Willis commented that there is a court case and the court stated we cannot enforce these classifications impending legal action. Mr. Willis expressed hope that the case will be resolved in the next few weeks.

Ellen Schanzle-Haskins added that the Department had arranged a meeting with IDOT but since a court case was filed, this meeting has been deferred.

Roberto Carmona announced his daughter Tonantzin Carmona was newly appointed the Director of the Office of New Americans for the City of Chicago. He will circulate the article to the board members to share.

Kim Bobo asked to find out what else can members do moving forward. The Director added that members can help with Outreach especially this summer with the Inter-Faith conference. The members can be pro-active in the community. He added that the Governor is supporting our board members with our goals on Outreach. For example, the Equal Pay Act being organized by Tumia Romero is another way to get involved.

Jorge Ramirez added that as Labor Advisory members with our experience and presentations we should reach out to manufacturers as an outreach and in the community. Especially the Safety division, the consultation programs are free. The members can reach out to manufacturers to hold consultation services with the Safety division. He added this can help save lives and have safety come first in the companies. Jorge shared some ideas and stories of past board memberships in which he was part of. As members it is important to move forward, especially if there is a way we can change lives for workers.

Ralph Graham commented on IDOL staff and members and commended everyone. Ralph Graham asked if IDOL can have a phone number business card with all the important numbers. The Director added that the power point file can be sent which shows all the laws the Department enforces so that LAB members can reach out to businesses. He added that members should refer to the Department's website because it is always being updated with new information. Tammy Miner, Chief Financial Officer said she will look into the issue of having business cards with all the important phone numbers. Ms. Miner added that she will send out the general breakdown of the Department's budget. She stated that the state budget is being reviewed with a budget cut of 18% because 93% is personal services. This is the area which will be potentially impacted. This means IDOL will be operating with 87 employees because of hiring issues but we might have to lay-off 18 employees depending on the budget. The Director added the members can support the Department of Labor at the Legislation sessions. Jorge Ramirez also asked for a sheet with numbers of the Department has achieved. The Director stated that figuring out a different way to fund our agency will take a lot of discussion. The Department has ideas and plans for the future. The Director commended all the IDOL staff and the dedication they have to move forward.

XIV. Adjournment

The meeting was adjourned at 3:14 pm by Jorge Ramirez, Chairperson.